

*New York City
Conflicts of Interest Board*

Annual Report 1996

Sheldon Oliensis

Chair

Bruce A. Green

Jane W. Parver

Benito Romano

Shirley Adelson Siegel

Members

Mark Davies

Executive Director/Counsel



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LETTER TO THE MAYOR

December 31, 1996

Honorable Rudolph W. Giuliani
Mayor of the City of New York
City Hall
New York, New York 10007

Dear Mayor Giuliani:

On behalf of the Conflicts of Interest Board, I am pleased to submit this report of the Board's work for 1996. While the Board's activities in 1996 are set out more fully in the body of the report, the following highlights deserve special mention.

Training and Education

In May 1996 the Board presented its third ETHICS IN CITY GOVERNMENT seminar, which, as in the past, was attended by City elected officials, agency heads, agency counsel, Inspectors General, disciplinary counsel, community board representatives, and interested members of the Bar. At this seminar the Board was fortunate to have remarks by your Honor and by Council Speaker Peter Vallone, as well as the participation of a number of agency counsel.

In 1996 the Board's staff conducted 30 training sessions, targeted at public servants who either advise other employees about Chapter 68 or who are likely to encounter potential conflicts of interest situations. Unfortunately, such sessions can reach only a tiny fraction of the City's 200,000 workers. To fulfill its Charter mandate to provide ethics training to all City employees, the Board has therefore undertaken two major training initiatives. First, the Board has continued to work with your office and the City's Law Department on a proposed directive, which would mandate conflicts of interest training and the appointment of an ethics officer in every Mayoral agency to oversee such training. Second, the Board has begun implementing a train the trainer program, whereby the Board will train ethics trainers in each City agency.

During 1996 the Board was able to work with Crosswalks Television to produce two public service announcements informing public servants about the work of the Board. Both PSA's have aired on Crosswalks a number of times.

Since hiring its new Education and Publications Coordinator, the Board has been able to create an audiotape public service announcement, which the Board is planning to air on commercial radio stations; to write a script for a PSA, which has already aired on several commercial radio stations; and to arrange for half-hour public service interviews of the Board's Executive Director by WLTW-FM and WCBS-FM. The Board has also developed a number of new publications, virtually all of which were created and reproduced in-house at little cost to the City.

Requests from City Employees for Guidance; Advisory Opinions and Board Rules

During 1996, the Board received 367 written requests for advice from public servants as to the propriety of their proposed outside activities or interests under Chapter 68. In addition to written requests for advice, the Board received approximately 25 telephone inquiries each week - about 1,200 to 1,400 during the year.

During 1996 the Board issued 222 staff letters, 84 Board letters, including 50 waiver letters, four orders, and eight advisory opinions. (Some advisory opinions also include orders.)

Opinions issued in 1996 worthy of special comment include those addressing City employees' acceptance of gifts; City employees' representing private interests before their own agencies or on matters involving their agencies; and former City employees' continuing to work for their former labor unions for which they had worked, pursuant to labor agreements, as part of their City jobs.

The Board has found that fewer matters are coming before the Board that present novel issues not previously adjudicated by the Board in earlier advisory opinions, thus reducing the necessity for formal advisory opinions in these matters.

In regard to making its opinions readily available to lawyers and others, the Board took a giant step forward in 1996. In August, the Board arranged to have its advisory opinions available on Westlaw, a computerized legal research database subscribed to by tens of thousands of lawyers around the world.

Effective March 7, 1996, the Board adopted significant revisions to its procedural rules for hearings. In addition, during 1996 the Board developed, and will promulgate in 1997, an amendment to its "valuable gifts" rule which will make explicit that the prohibition on accepting gifts worth \$50 or more from persons doing business with the City includes accepting gifts from any single source which are, in the aggregate, worth more than \$50 during any given twelve-month period. During 1996 the Board also began developing a rule pursuant to section 2604(b)(2) of the Charter to identify some forms of conduct prohibited by that provision. Absent such a rule, the Board may not impose a penalty for violation of that section. The Board also drafted a rule to define "particular matter" in the context of real property tax assessments. A public hearing on that proposed rule will be held in February 1997.

Enforcement

In 1996, the Board built upon its previous enforcement work and continued to use enforcement as a means of educating the public about Chapter 68 and the financial disclosure law. Despite the paucity of enforcement resources, the Board was able during 1996 to conclude several important cases. These dispositions were reported in the City's daily newspapers as well as in specialized publications on New York City law and included the imposition of a \$7,500 fine against former Comptroller Elizabeth Holtzman for participating in the selection of a Fleet Bank affiliate as co-manager of a City bond issue when Ms. Holtzman's Senate campaign had received a loan, personally guaranteed by her, from Fleet

Bank; a \$1,000 fine against a former City employee for sending his resume to a City contractor while he, as a public servant, was directly concerned with that contractor's \$10 million contract with the City; a public disposition of the case of David Begel, former spokesman for the Chancellor of the City Board of Education, where Mr. Begel held a prohibited consulting position with a firm engaged in business dealings with the Board of Education while he also worked for the Board of Education for a short period of time in 1995.

As a result of increased publicity of the Board's enforcement results and greater visibility, the Board saw a great increase in its Chapter 68 enforcement caseload in 1996, during which the Board received 50 new complaints, compared with 29 in 1995, 31 in 1994, 29 in 1993, 22 in 1992, 20 in 1991, and 8 in 1990. In 1996, the Board disposed of 32 Chapter 68 complaints. The enforcement workload during 1996 was up 72% over 1995. At the close of 1996 the Board had a total Chapter 68 caseload of 123 cases, which is certain to grow unless the Board secures additional resources.

Financial Disclosure

Administering financial disclosure is a monumental task. The Board's duties in this area include preparing and distributing 12,000 annual report forms, collecting and filing these reports, reviewing them for completeness and signatures, identifying and notifying late filers and non-filers of their non-compliance, considering late filers' requests for waivers of fines, collecting fines, tracking public servants' appeals from their agency's determination that they must file, filing amendments to reports already on file, initiating enforcement proceedings against non-filers and late filers, evaluating filers' privacy requests, and responding to disclosure requests from the media and others.

The Board has an excellent compliance record with respect to financial disclosure. For calendar years 1989 through 1993, the Board has achieved and maintained a compliance rate exceeding 99%. For calendar years 1994 and 1995 the Board has a compliance rate of 98.4% and 98.6%, respectively. However, the Board regards as unacceptable any compliance rate that is less than 100% and, therefore, vigorously pursues City employees who fail to file financial disclosure reports or who file late and fail to pay the required late fine. As of December 31, 1996, the Board had issued 173 orders against such violators. In the entire period since the Board assumed responsibility for financial disclosure in 1990, the Board has collected, as of December 31, 1996, \$228,058 in fines, \$35,195 of which was collected during 1996.

To reduce the enormous burden of administering this financial disclosure system, and thereby to enable the Board's staff to spend more time on substantive reviews of financial disclosure reports and Chapter 68 enforcement, the Board has undertaken three new initiatives. First, the Board has sought an Executive Order that we anticipate will be issued in early 1997, requiring that final lump sum payments from departing managerial employees be withheld until they have fully complied with their financial disclosure obligations. Since some 40% of the Board's financial disclosure enforcement actions relate to such employees, this procedure will save the Board significant time and effort.

Second, the Board is seeking to redefine the pool of public servants required to file

financial disclosure reports to eliminate those filers who are unlikely to face significant potential conflicts of interest. Third, with the assistance of the Office of Operations, the Board is undertaking to computerize the financial disclosure process, which would cut the per copy cost of administering the financial disclosure system *by almost 50%* and would at last permit the Board to conduct substantive reviews of disclosure reports, as mandated by state and City law.

Conclusion

For the last two years, the Board has been undergoing a process of reorganization and restructuring, with the goal of streamlining Board operations and increasing productivity. These efforts have been a success. The Board is now able to do far more with less.

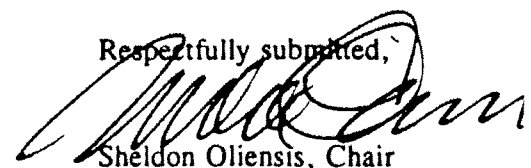
However, the Board will not be able to continue to make the strides it has been making if its budget is not rectified. Since fiscal year 1994, the Board's budgeted staff has been reduced by 35%. The Board's fiscal year 1997 OTPS budget was slashed to \$54,764, a 74% reduction from fiscal year 1995, affecting all operations of the Board. Of this only \$27,087 is available to the Board, since the remainder is for fixed costs, such as heat, light, and power. This OTPS budget is totally insufficient. Also in the personnel area, the specter of past and possible future budget cuts continues to haunt the Board. As noted, Board staff have been cut by 35% since 1994. The Board's single enforcement attorney faces a backlog of more than 120 cases that grows daily despite Herculean efforts on her part. Also, the Board has only four support staff for the entire agency.

In 1996 the Board's financial disclosure unit, which has been cut by 50% in the past two years, was forced to suspend substantive review of financial disclosure reports (except for elected officials and commissioners), suspend enforcement of the financial disclosure law against former City employees, suspend review of many reports for completeness, and refuse to provide copies of publicly available materials.

The enclosed report outlines some of the efforts the Board has made (there are many more) and some of the initiatives the Board is undertaking, particularly the electronic filing system, to attempt to compensate for these staff and OTPS cuts. But even with all of these efforts and initiatives, the Board cannot carry out its Charter-mandated mission without a restoration of a substantial portion of these past cuts.

In conclusion, may I express my profound gratitude to my fellow Board members for their dedication and support. On behalf of the Board, may I also express our appreciation to you, to your counsel, Dennison Young, your Corporation Counsel, Paul A. Crotty, and your Commissioner of Investigation, Edward J. Kuriansky, for the cooperation and assistance they have provided us. Finally, I would be remiss if I did not acknowledge with gratitude the efforts of the Deputy Mayor for Operations and the Office of Operations in furthering the Board's initiatives.

Respectfully submitted,



Sheldon Oliensis, Chair

INTRODUCTION

This year, 1996, marks the seventh year in the life of the Conflicts of Interest Board, which was created by the revised New York City Charter, effective January 1990. Chapter 68 of the Charter has vested the Board with broad responsibilities. Among its charter-mandated duties, the Board is required to educate City officials and employees about Chapter 68's ethical standards; interpret Chapter 68 through issuance of formal advisory opinions and promulgation of rules; respond to requests from current and former public servants for advice and guidance; prosecute violators of Chapter 68 in administrative proceedings; and administer and enforce the City's financial disclosure law. This annual report thus reports on the Board's activities in each of the following areas during 1996: (1) training and education; (2) responses to inquiries from City employees for guidance; (3) advisory opinions and rules; (4) enforcement proceedings; (5) financial disclosure; and (6) budget and personnel.

MEMBERS AND STAFF OF THE CONFLICTS OF INTEREST BOARD

Appointed by the Mayor and confirmed by the City Council, the Board's five members serve six-year staggered terms. Under the Charter, the members must be selected on the basis of their "independence, integrity, civic commitment and high ethical standards." They may not hold public office or political party office while serving on the Board.

Board Chair Sheldon Oliensis was first appointed to the Board in September 1990 and renominated in 1996. He is Special Counsel to the law firm of Kaye, Scholer, Fierman, Hays & Handler.

Bruce A. Green, a professor at Fordham University School of Law, was appointed to the Board in November 1995.

Jane W. Parver, a partner at Kaye, Scholer, Fierman, Hays & Handler, was appointed to the Board in August 1994.

Benito Romano, a partner in the law firm of Willkie, Farr & Gallagher, was also appointed to the Board in August 1994.

Shirley Adelson Siegel, an Adjunct Professor of Urban Planning at Columbia University, has served as a Board member since September 1990. She was reappointed for a six-year term after her first term expired in March 1992.

The Board's 17-member staff is divided into five units: Training and Education, Legal, Enforcement, Financial Disclosure, and Administrative. The staff, listed in Table 1 at the end of this report, is headed by the Executive Director/Counsel, Mark Davies.

1. TRAINING EDUCATION

The Board believes that it is better to prevent violations of the conflicts of interest law than to punish violations after they occur. Accordingly, the Board regards training and education as one of its most important and vital activities.

The Board has historically been extremely understaffed in the training and education area. But in October 1996 the Board was able to hire a highly qualified individual for the training and education unit, thus permitting the Board substantially to expand its training and education activities.

Citywide Seminar

The Board has co-presented three highly successful ETHICS IN CITY GOVERNMENT seminars. As in the past, the most recent seminar, in May 1996, was attended by City elected officials, agency heads, agency counsel, Inspectors General, disciplinary counsel, community board representatives, and interested members of the Bar. At this seminar the Board was fortunate to have remarks by the Mayor and Council Speaker Peter Vallone, as well as the participation of a number of agency counsel.

The annual ethics seminar helps make high level City officials more sensitive to conflicts issues and more knowledgeable about Chapter 68. It also has helped familiarize officials with the legal and educational resources of the Conflicts of Interest Board.

The Board's 1996 Education Programs

Training Seminars, Agency Briefings, and Workshops

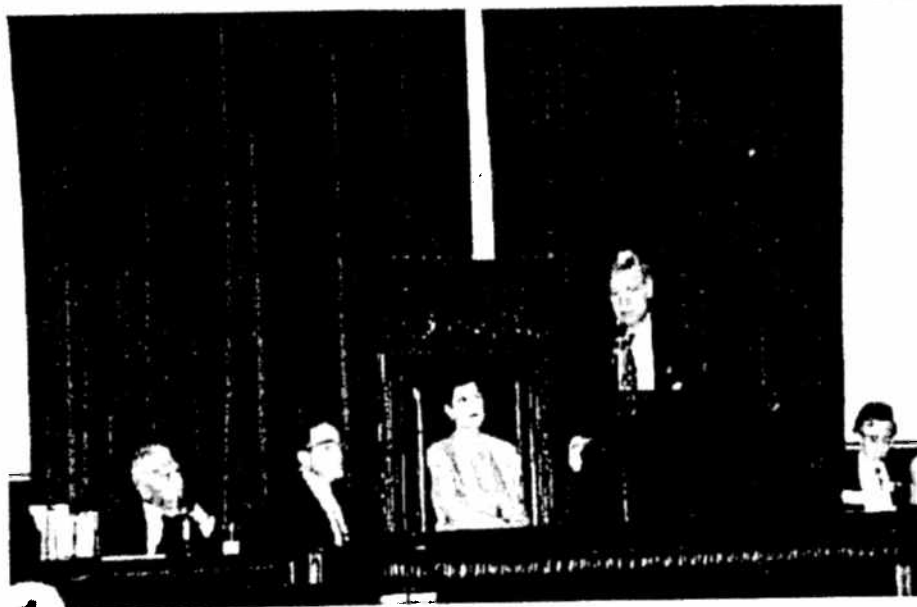
In 1996 the Board's staff conducted 30 training sessions, targeted at public servants who either advise other employees about Chapter 68 or who are likely to encounter potential conflicts of interest situations.

Generally, training sessions are organized and taught by the Board's Director of Training and Education. At times, other staff members have also

actively participated in presenting training sessions.



Mayor Giuliani and Speaker Vallone address the Board's Citywide Ethics in Government Seminar.





At the Citywide Ethics in Government Seminar, Felix Ciampa, Legislative Attorney at the City Council, Jo-Ann Frey, the Board's Deputy Director, and Richard Weinberg, General Counsel to the City Council, conduct a session on post-employment restrictions ...



and Marla Simpson, General Counsel to the Manhattan Borough President's Office, Hugh B. Weinberg, the Board's Deputy Counsel, and Lester Taub from the Mayor's Community Assistance Unit discuss the City's ethics law with community board members and staff.

Ethics Officers and Mandated Ethics Training

The Board has been working for the past year and a half with the Mayor's Office and the City's Law Department on a proposed directive, which would mandate conflicts of interest training and the appointment of an ethics officer in every Mayoral agency. Under the directive, the agency ethics officer will assist public servants in obtaining advice on conflicts of interest matters and will be responsible for making information on the ethics law widely available to agency employees. The Board cannot possibly hope to train 200,000 City employees individually, but the Board can train ethics officers and ethics trainers in every City agency, who in turn will educate their own employees about Chapter 68. The ethics officer directive is therefore critical to the Board's training and education effort and would go a long way towards preventing violations of the conflicts of interest law from occurring.

Radio and Television

During 1996 the Board was able to work with Crosswalks Television to produce two public service announcements informing public servants about the work of the Conflicts of Interest Board. The first PSA was written by the Board's enforcement attorney and set to rap music. The second PSA, entitled "Kids Play," used children to address a conflict of interest situation, followed by comments from Board member Benito Romano. Both PSA's have aired on Crosswalks a number of times.

Since hiring its new Education and Publications Coordinator, the Board has been able to create an audiotape public service announcement for the Board, which the Board is planning to air on commercial radio stations; to write a script for a PSA, which has already aired on several commercial radio stations; and to arrange for half-hour public service interviews of the Board's Executive Director by WLTW-FM and WCBS-FM.

Other Board Training Programs

Training and education is not confined to the Board's training and education unit. The financial disclosure unit provided training to agency financial disclosure liaisons and MIS personnel about Phase I of the Electronic Filing System (EFS), which was initiated in 1996. Representatives from each of the five Phase I agencies attended this training.

In addition, staff members conducted outreach to schools to inform students about the Board and about the jobs of Board staff, in an effort to reduce the dropout rate in schools and help the students set career goals.

Printed Materials

The Board has developed a variety of printed educational materials about Chapter 68 and the financial disclosure law. Most of these materials are used in educational seminars for City employees or are distributed to City employees who contact the Board with questions about Chapter 68. Board staff routinely distribute copies of materials to personnel officers, agency counsel, and other interested City employees. In addition, materials are provided to professional associations, good government groups, the media, private law firms and attorneys, law schools, government ethics agencies throughout New York State and around the country, and individual members of the public.

Table 2 sets out the current list of Board publications, including the Board's new flyer alerting City employees to situations that may involve conflicts of interest. It should be emphasized that the Board now creates and reproduces virtually all of its publications in house at very little cost to the City. Even the photocopying is performed by interns and Work Experience Program participants.

Articles

The Board continues to work with THE CHIEF-LEADER, the City's civil service newspaper, to educate the City's public servants about the provisions of the conflicts of interest law and about the Board's programs and procedures. Once each month, since May of 1994, the CHIEF has published a "Myth of the Month" column written by a member of the Board's staff correcting a popular misconception that City employees have about the ethics law or explaining the procedures and services of the Board.

The response to these columns has been excellent, and Board staff have reproduced them as hand-outs at Board training programs.

In addition, the SENTINEL, the newspaper of the Civil Service Retired Employees Association, has reprinted one of the Board's CHIEF-LEADER articles. Staff at the Board also contributed three chapters to a book on governmental ethics to be published by the American Bar Association in June 1997.

COGEL

The Board has undertaken to make its programs known beyond the confines of New York City and to obtain innovative ideas from other ethics agencies around the country.

In December, Board staff attended the annual conference of the Council on Government Ethics Laws ("COGEL"), the international organization of governmental ethics agencies. The 1996 conference was held in Philadelphia.

Several staff members made presentations at the conference. Mark Davies, the Board's Executive Director, was the American commentator on a plenary speech by Professor Anthony King of Essex, England. Laura Denman, Director of Training and Education, working with staff from the King County (Seattle) Ethics Commission and the Indiana State Ethics Commission, moderated a panel discussion on Innovations in Ethics Training. Hugh Weinberg, Deputy Counsel, and Joan Salzman, Director of Enforcement, hosted luncheon table discussions on various ethics topics. And Jerry Rachnowitz, Director of Financial Disclosure, and John Sotomayor, MIS Coordinator, demonstrated the Electronic Filing System for conference participants.

2. REQUESTS FROM CITY EMPLOYEES FOR GUIDANCE

During 1996, the Board received 367 written requests for advice from public servants as to the propriety of their proposed outside activities or interests under Chapter 68.

In addition to written requests for advice, the Board received approximately 25 telephone inquiries each week - about 1,200 to 1,400 during the year. These callers either requested information or had specific questions for staff regarding the provisions of Chapter 68. This substantial number of calls may be attributable to the higher profile of the Board, as a result of the new videotapes, cable TV programs, posters, training sessions, Myth of the Month columns, and the media attention to the Board's enforcement results.

Written requests for advice which present issues that are clear-cut under the Charter, or which involve issues that have been decided by the Board in prior opinions or rules, are handled by the Board's staff through the issuance of staff letters. Those cases that present novel issues, or that are particularly complex or sensitive, are considered and determined by the full Board.

During 1996 the Board issued 222 staff letters, 84 Board letters, including 50 waiver letters, 4 orders, and 8 advisory opinions. (Some advisory opinions also include orders.)

As a result of the departure of one of the Board's attorneys in September 1996, the Board experienced a resurgence of a backlog in requests for staff

letters, waivers, orders, and formal advisory opinions. At year end, the Board had pending before it 37 such requests, in contrast to 13 requests pending at the end of 1995. The Board anticipates that, with the hiring of a new attorney, this backlog should be eliminated.

3. ADVISORY OPINIONS AND RULES

The Board's issuance of advisory opinions and rules performs both an adjudicatory and an educational function. The opinions provide guidance not only to the individual public servants who request them but also to many other public servants with similar problems. These opinions are written so that they provide a basis for agency counsel to give informed guidance to agency employees, without the necessity of bringing each individual matter to the Board. They also enable the Board's staff, through staff letters, to give expeditious responses on the broad range of matters covered by these opinions, without the necessity of formal Board action.

Finally, as the advisory opinions are brought to public servants' attention through the Board's education program, City employees will come to a fuller understanding of the requirements of Chapter 68. A summary of the advisory opinions issued in 1996, as well as cumulative section and subject indexes to advisory opinions from 1990 through 1996, are annexed to this report.

Opinions issued in 1996 worthy of special comment include opinions addressing City employees' acceptance of gifts; City employees' representing private interests before their own agencies or on matters involving their agencies; and former City employees' continuing to work for their former labor unions for which they had worked, pursuant to labor agreements, as part of their City jobs.

In Advisory Opinion No. 96-1, the Board determined that a former City employee who had, as a City employee, worked on labor relations matters as part of his union's labor agreement, could continue to work on such matters and could continue to deal directly with the City, notwithstanding the post-employment restrictions of Chapter 68. The Board found that this work would not conflict with the purposes and interests of the City and granted a waiver to the former employee.

In its ongoing effort to make sure that City employees' official actions are not influenced either by private interests or the prospect of private gain, the Board has also issued opinions dealing with both the propriety of accepting gifts and with City employees who hold other, non-City jobs. For example, the Board, in Advisory Opinion No. 96-3, determined that a City employee could not accept from someone who does business with the City a gift of, for example,

a pair of tickets to a sporting event, when the combined value of the tickets exceeds \$50, even if the employee repays the amount by which the value of the gift exceeds \$50.

Similarly, the Board seeks to safeguard against the possibility that a City official's or employee's non-City employment conflicts with his or her City duties. In Advisory Opinion No. 96-2, the Board advised Dr. Luis Marcos, President of the Health and Hospitals Corporation, that he could retain his tenure at New York University's School of Medicine, provided he was not paid for teaching at NYU and recused himself from contractual negotiations and related dealings between HHC and NYU (though he was allowed to be involved in the day-to-day management of services provided to HHC under the contract).

Generally, the main thrust of the Board's opinions is not to prohibit City employees from having outside or non-city interests, often essential to supplement limited City salaries. Rather, the Board wishes to encourage City employees to act, with respect to these private interests, in a manner consistent with the conflicts of interest law. Indeed, the Board is cognizant of the ever-growing spirit of cooperation between the public and private sectors and, partly through its advisory opinions, the Board has helped to assure that such cooperation is carried out without conflicts of interest or the appearance of conflicts.

Two other Board opinions concerned representing City employees' private interests before their own City agencies or on matters involving their own agencies. In Advisory Opinion No. 96-4, the Board determined that neither members of community boards nor their partners in private firms could represent private clients before their own community boards. In a similar vein, in Advisory Opinion No. 96-5, a part-time member of a City commission was advised that his private firm could not accept as a client an industry group regulated by the commission in connection with possible litigation concerning the adoption of new rules by the commission, on which the commission member had already acted and voted. One of the reasons behind this decision was the Board's concern that such representation could have resulted in the potential appearance that the City commissioner was seeking to serve the interests of his firm and its clients rather than exclusively serving the interests of the City.

The Board believes that it is important to offer City employees detailed guidance in these and all other areas covered by Chapter 68. Accordingly, as exemplified by the opinions discussed above, the Board continues to issue opinions of broad applicability which provide interpretation and clarification of Chapter 68 and the Board's rules. The end result will be, it is hoped, a clear and comprehensive body of law that makes Chapter 68 easier for public servants

to understand and comply with.

The Board has found that fewer matters are coming before the Board that present novel issues not previously adjudicated by the Board in earlier advisory opinions, thus reducing the necessity for formal advisory opinions in these matters.

Board Rules

Effective March 7, 1996, the Board adopted significant revisions to its procedural rules for hearings. Although the hearing rules adopted by the Board in 1991 have worked well, several issues have arisen with respect to those rules that needed to be addressed, particularly in view of the Board's substantially increased enforcement efforts. The amendments will promote greater efficiency in enforcement by eliminating procedural requirements that experience has proven are unnecessary.

In addition, during 1996 the Board developed, and will promulgate in early 1997, an amendment to its "valuable gifts" rule which will make explicit that the prohibition on accepting gifts worth \$50 or more from persons doing business with the City includes accepting gifts from any single source which are, in the aggregate, worth more than \$50 during any given twelve-month period.

During 1996 the Board also began developing a rule pursuant to section 2604(b)(2) of the Charter to identify some forms of conduct prohibited by that provision. Section 2604(b)(2) prohibits public servants from engaging in business, transactions, or private employment, or having financial or other private interests, direct or indirect, which are in conflict with the proper discharge of the public servant's official duties. Under the Charter, however, the Board may not impose civil fines for a violation of section 2604(b)(2), unless the violation involves conduct thus identified by a rule of the Board.

The Board also drafted a rule to define "particular matter" in the context of real property tax assessments. A public hearing on that proposed rule will be held in early 1997.

Publication and Distribution of Opinions and Rules

Opinions and Rules of the Board are distributed on a regular basis to agency counsel, the City's Law Department, the Municipal Reference Library, the New York Public Library, the Association of the Bar of the City of New York, and the New York County Lawyers Association. An up-to-date set of the Board's opinions is also available on the Law Department's computerized City

Law Legal Research System, which gives agencies, including the Board, that have access to that system the capability of searching the opinions by words and phrases.

All of the Board's rules and opinions are regularly published in the City Record and are the subject of articles in CITYLAW, a publication of New York Law School, and THE CHIEF-LEADER, the civil service weekly.

The Board took a giant step forward in 1996 in making its opinions readily available to lawyers and others. In August, the Board arranged to have its advisory opinions available on Westlaw, a computerized legal research database subscribed to by tens of thousands of lawyers around the world.

The Board is also arranging to have its advisory opinions, as well as the text of Chapter 68 and the Board's rules, available on the City's Home Page, the City's new bulletin board on the World Wide Web, accessible through the Internet.

Charter Amendments

As required by the Charter, the Board began reviewing the provisions of Chapter 68 and, during 1997, will recommend to the Council those changes or additions that the Board considers appropriate or desirable. Some of these changes will be somewhat technical in nature - for example, permitting high-level agency employees below the agency head level to approve waiver requests that must be submitted to the Board for final determination. Other changes will effectuate important substantive improvement.

Because the Board lacks sufficient legal staff to research and draft the proposed amendments, the Board enlisted the assistance of Prof. Barry Zaretsky and his legislative drafting class at Brooklyn Law School in this endeavor. Two Brooklyn Law School students devoted substantial time to this effort in coordination with the Board's staff. At the end of 1996, the Board began reviewing and revising the initial draft of the proposed amendments.

4. ENFORCEMENT

The Board enforces both Chapter 68 and the City's financial disclosure law.

In 1996, the Board built upon its previous enforcement work and continued to use enforcement as a means of educating the public about Chapter

68 and the financial disclosure law. The Board continued to benefit from the help of *pro bono* counsel in one of its most protracted cases. The enforcement unit, consisting of a single attorney, continues to lack sufficient resources to accomplish its mission.

Despite the paucity of enforcement resources, the Board was able during 1996 to conclude several important cases. These dispositions were reported in the City's daily newspapers as well as in specialized publications on New York City law. In the matter of *Elizabeth Holtzman*, the Board issued a lengthy decision finding that the former Comptroller of the City violated Charter § 2604(b)(3) and fined her \$7,500 (the largest single fine imposed to date in a Chapter 68 case), and found further that Ms. Holtzman had violated Charter § 2604(b)(2) with respect to her participation in the selection of a Fleet Bank affiliate as a co-manager of a City bond issue in light of Fleet Bank's loan to her Senate campaign which Ms. Holtzman had personally guaranteed. Ms. Holtzman commenced an Article 78 proceeding challenging the Board's decision, and an appellate decision is expected some time in 1997.

In addition, the Board's disposition in the case of *Sergio Matos* received considerable attention. The Board fined Matos \$1,000 for sending his resume to a City contractor while he was directly concerned with that contractor's \$10 million contract with the City. The \$1,000 fine took into account Matos's financial hardship. Matos publicly admitted his conflict of interest as part of the disposition and that he had resigned his City job in the face of departmental charges at his agency.

In the case of *David Begel*, former spokesman for the Chancellor of the City Board of Education, Mr. Begel consented to the Board's finding that he had a conflict of interest and to the publication of that finding. He held a prohibited consulting position with a firm engaged in business dealings with the Board of Education while he also worked for the Board of Education for a short period of time in 1995. The Board imposed no penalty because of mitigating circumstances, including his return of the consulting fee, the short time period, and his having himself reported the conflict to the Board.

The Board also acted upon a complaint by Borough President Ruth Messinger against Mayor Giuliani. The complaint questioned whether the Mayor should participate in the Franchise and Concession Review Committee's consideration of matters involving Time Warner, Inc., News Corporation, and Fox Television, a subsidiary of News Corporation, in light of Donna Hanover Giuliani's part-time position with Fox Television. The Board found that the Mayor was not required by the Charter to recuse himself from participating in these matters in view of the specific facts in the case: Neither the Mayor nor his

wife had an ownership interest in the companies involved, and his wife's position, not attributed to him under the Charter, was a part-time, non-managerial position, so that she would be unlikely to benefit from the Committee's decision.

Also in 1996, the Board gave consideration to a public complaint from City Council member Andrew Eristoff against Borough President Ruth Messinger. The complaint alleged that Ms. Messinger had improperly paid for a radio advertisement with approximately \$7,400 of public monies from the Borough President's budget. The advertisement concerned zoning for "superstores" in the City. The complaint alleged further that the advertisement was a partisan attack on the Mayor by a potential candidate for Mayor in the next election. The Borough President has responsibilities under the City Charter for land use matters affecting the City. The Board dismissed the complaint, finding "insufficient evidence for the initiation of an enforcement proceeding against Ms. Messinger."

The Board continued to cooperate with other law enforcement agencies. In 1996, the first criminal jury trial and conviction in a Chapter 68 case since the Charter was expanded in 1990 resulted in the sentencing of *Basil Randolph Jones* in Manhattan Supreme Court. Mr. Jones, the former Deputy Collector in the Department of Finance in Brooklyn, was convicted of two felony counts of offering a false instrument for filing, and of the conflict of interest of having an interest in a real estate management firm that did business with the City. The case revolved around Mr. Jones' denial of his City employment on City application forms for a contract with the City Department of Housing Preservation and Development.

As a result of increased publicity of the Board's enforcement results and greater visibility, the Board saw a great increase in its Chapter 68 enforcement caseload in 1996, during which the Board received 50 new complaints, compared with 29 in 1995, 31 in 1994, 29 in 1993, 22 in 1992, 20 in 1991, and 8 in 1990. In 1996, the Board disposed of 32 Chapter 68 complaints. The enforcement workload during 1996 was up 72% over 1995. At the close of 1996 the Board had a total Chapter 68 caseload of 123 cases, which is certain to grow unless the Board secures additional resources.

With respect to financial disclosure enforcement, the enforcement unit served 87 Petitions and Trial Notices in 87 cases of late filers and non-filers. After filing the cases at OATH and default hearings, the Board issued 26 Orders in these cases, some reflecting multiple-year violations, and settled or withdrew 61 of these cases, frequently due to the public servant's filing of the financial disclosure report and payment of late filing fines, as a result of the

commencement of litigation. The enforcement unit continued to utilize local law student interns to help with these cases. In the process, the students learned valuable trial and negotiation skills while helping the Board keep its financial disclosure caseload current. In 1996, for the first time, the Board issued public Orders recommending that defaulting employees be disciplined by their agencies for failing to file their reports and/or pay their late fines.

The Board successfully defended a \$10,000 Board Order against an Article 78 challenge in the case of *Indravadan Desai*, a former City employee. The New York State Supreme Court in Manhattan rejected Mr. Desai's challenge to the Board's finding that he was required to file a 1992 financial disclosure report. The Court ruled that the administrative law judge properly exercised his discretion in denying an application by the former employee to stay the Board's enforcement proceeding during the pendency of a criminal case against him.

5. FINANCIAL DISCLOSURE

Administering financial disclosure is a monumental task. The Board's duties in this area include preparing and distributing 12,000 annual report forms, collecting and filing these reports, reviewing them for completeness and signatures, identifying and notifying late filers and non-filers of their non-compliance, considering late filers' requests for waivers of fines, collecting fines, tracking public servants' appeals from their agency's determination that they must file, filing amendments to reports already on file, initiating enforcement proceedings against non-filers and late filers, evaluating filers' privacy requests, and responding to disclosure requests from the media and others.

The Board has an excellent compliance record with respect to financial disclosure. As detailed in Table 3, for calendar years 1989 through 1993, the Board has achieved and maintained a compliance rate exceeding 99%. For calendar years 1994 and 1995 the Board has a compliance rate of 98.4% and 98.6%, respectively.

However, the Board views as unacceptable any compliance rate that is less than 100%. The Board is therefore vigorously pursuing those *active* City employees who have violated the law by failing to file, or by filing late, and is imposing the appropriate fine under the law. At the close of 1996 there were *no* active City employees who had not filed financial disclosure reports for calendar years 1989 through 1994. For calendar year 1995 reports, which were required to be filed in May 1996, 32 active public servants - less than a half of one percent - had failed to file their reports with the Board as of December 31, 1996.

This vastly improved record is attributable, first, to the extraordinary effort of the financial disclosure staff and the excellent cooperation the Board has received from agency heads in taking administrative measures to assure that all active employees file on time, and, second, to the Board's vigorous enforcement program.

With respect to *former* City employees who have either failed to file their reports for 1989 through 1992, or who filed their reports late and failed to pay the required late fine, the Board has adjudicated all cases of non-filers or late filers for those years.

With respect to former public servants who have either failed to file their reports or who filed their reports late, for calendar years 1993, 1994, and 1995, as noted above, by the close of 1996 the Board had issued 87 notices of trial. Of these 87 cases brought to OATH the Board issued 26 orders, including one against a former public servant with multiple-year violations. These 26 individuals were assessed civil penalties ranging from \$1,000 to \$10,000. The remaining cases were settled or withdrawn. As of December 31, 1996, the Board had issued 173 such orders.

With respect to current and former City employees who were required to file 1995 reports (due May 1, 1996), the Board had a compliance rate of 98.6% as of December 31, 1996. During 1996 the Board sent individual notifications to the 362 non-filers and also notified their agency heads. If the active employees remain non-filers, the Board will commence enforcement proceedings.

Of the 11,295 1995 reports the Board received in 1996, 575 - roughly 5% - were filed after the May 1, 1996, deadline and were therefore considered late. During 1996 the Board collected late fines from 259 of those late filers, totalling \$25,815. The Board waived fines in 294 cases where an individual demonstrated a medical excuse satisfactory to the Board or where the public servant's agency had failed to timely notify the individual of his or her requirement to file a financial disclosure report. The Board is proceeding to enforcement in the remaining 75 cases.

In the entire period since the Board assumed responsibility for financial disclosure in 1990, the Board has collected, as of December 31, 1996, \$228,058 in fines, \$35,195 of which was collected during 1996.

Initiatives

To reduce the enormous burden of administering this financial disclosure system, and thereby to enable the Board's staff to spend more time on

substantive reviews of financial disclosure reports and Chapter 68 enforcement, the Board has undertaken three new initiatives.

Departing Employees

The first initiative, a Mayoral Directive that at year end was being finalized by the Law Department and the Mayor's Counsel's office, is directed at managers leaving City service. This Directive will withhold final lump sum payments from departing managerial employees, who are required to file a disclosure report, until they have fully complied with their financial disclosure obligations. Over 90% of the Board's financial disclosure enforcement actions involve former employees, about half of whom are managers. Tracking these former City employees down and securing their compliance with the financial disclosure law imposes an enormous and wholly unnecessary burden on the Board's staff. This Directive, by eliminating some 40% of the Board's financial disclosure enforcement actions, will save the Board significant time and effort.

Redefining Required Filers

The second financial disclosure initiative involves redefining the pool of public servants required to file financial disclosure reports. The City's financial disclosure law casts a huge net and far exceeds the state mandate, which requires financial disclosure by four categories of New York City public servants: (1) elected officials; (2) agency heads, deputy and assistant agency heads, and board and commission members; (3) employees having certain contracting and purchasing functions; and (4) employees who establish policy.

The City has replaced the category of "policymakers" with the far broader category of all employees who are members of the management pay plan or who make more than \$64,200 per year. As a result, the total number of filers in the City greatly exceeds that required by state law. But financial disclosure laws should require disclosure by those employees who are at risk for conflicts of interest. Requiring filing by public servants who are in a position unlikely to involve conflicts of interest wastes time, both of the filers and of the Conflicts Board, and robs the Board of money and resources it needs to conduct substantive reviews of targeted reports filed by officials facing significant potential conflicts of interest. Therefore, the Board is proposing legislation either to replace the management pay plan and salary categories with policymakers, as required by state law, or to delete from the required list of filers M1 to M3 managers not otherwise required to file.

The Board's previous analysis of the positions of those M1 to M3 employees who do not fall into any other filing category indicates that these

employees lack the kind of policymaking or other responsibilities that would put them at significant risk for conflicts of interest. For example, they are computer programmers and architects, who lack authority to set policy and do not engage in contracting or similar activities. Analysis also indicates that the proposed amendment would eliminate approximately one-third of the current filers; in the experience of the financial disclosure unit, these filers' reports rarely contain useful information, yet they require substantial time, money, and effort to process.

Electronic Filing System

The third financial disclosure initiative is electronic filing, which would cut the per copy cost of administering the financial disclosure system *by almost 50%*, for example, by eliminating the need for reviews of disclosure reports for completeness, a process that now consumes three months of staff time. More importantly, electronic filing would at last permit the Board to conduct substantive reviews of disclosure reports, as mandated by state and City law.

Financial disclosure reports, on their face, rarely reveal a conflict of interest. Only by comparing the information on a report against information from earlier reports or from other sources does one identify a possible conflict. Currently, the Board can only make such a comparison for elected officials and commissioners, about 2% of the 12,000 filers. In view of the large number of reports filed with the Board, their contents *must* be contained in a database, which can be electronically compared with other databases, such as Vendex and IFMS. Since the Conflicts of Interest Board will never have the resources to enter into a computer manually all of the data contained in the reports, they *must* be filed in electronic form.

The Board's goal for the Electronic Filing System (EFS) is to institute a user friendly system to replace the current labor intensive, time consuming paperwork process and eliminate operating inefficiencies by reinventing the financial disclosure process. The electronic filing system will reduce cost in distributing, collecting, filing, reviewing, and inspecting 12,000 disclosure forms. In addition, the new electronic delivery system will achieve and sustain new vigorous standards of quality, cost effectiveness, delivery, timely investigations, and customer service. This system would also greatly reduce the burden on filers completing their forms after the first year because in subsequent years the filer would need only to make changes in the previous year's report.

During much of 1996, Board staff worked with the Office of Operations and consultants to develop an electronic filing system, which was successfully implemented as part of a Phase I project for approximately 300 filers from five

City agencies. At the close of 1996, the results of Phase I of the EFS were under review by the Board and the Office of Operations.

With respect to electronic filing, three final points should be noted. First, it must be emphasized that it is *not* the primary purpose of electronic filing to "catch" City employees violating the conflicts of interest law. Instead, the Board wishes to head off conflicts of interest before they become a problem. Currently, when the Board discovers a public servant who is unwittingly violating Chapter 68 - for example, by working for a private firm that has business dealings with some other City agency - the Board typically notifies the public servant and gives him or her an opportunity to resign from one of the positions or seek a waiver from the Board, if appropriate. Electronic filing would permit the Board to greatly expand this role of the Board as a preventer of ethics problems.

Second, although ethics boards throughout the nation have for years been discussing electronic filing of disclosure reports, to the Board's knowledge the Board would be the first ethics board in the nation actually to implement an electronic filing system. Indeed, the program might even be marketed to other ethics boards around the country.

Third, to produce a prototype of a sophisticated software program like the electronic filing system in less than four months is virtually unknown. The Board was able to meet that tight deadline only because of the dedication of its computer consultant, Softek Development, Inc., and in particular Drew Sernekos, the project manager, and Robert Oppenheim, the software architect, and, in addition, the extensive assistance provided by the Department for the Aging, especially Commissioner Herbert W. Stupp and Ted Taberski, Director of DFTA's Bureau of Administration and Budget. By sharing portions of its Uniform Benefits Assessment System program with the Board, DFTA saved the Board months of development time and hundreds of thousands of dollars. This inter-agency coordination should serve as a model for future software development by the City.

6. BUDGET AND PERSONNEL

The Board's fiscal year 1997 budget was \$920,406, with \$865,642 allocated to personal services and \$54,764 to other than personal services ("OTPS"). The Board's budgeted headcount for fiscal year 1997 was 17. The Board also had one part-time employee. The Board's authorized budget and headcount from fiscal year 1994 through fiscal year 1997 is summarized in Table 4 at the end of this report.

For the last two years, the Board has been undergoing a process of reorganization and restructuring, with the goal of streamlining Board operations and increasing productivity. These efforts, which were outlined in the Board's 1995 annual report, have been a success. The Board is now able to do far more with less.

However, the Board will not be able to continue to make the strides it has been making if its budget is not rectified. Since fiscal year 1994, the Board's budgeted staff has been reduced by 35%. The Board's fiscal year 1997 OTPS budget was slashed to \$54,764, a 74% reduction from fiscal year 1995, affecting all operations of the Board. Of this only \$27,087 is available to the Board, since the remainder is for fixed costs, such as heat, light, and power. This OTPS budget is totally insufficient. These cuts have, for example, required the Board to eliminate the financial disclosure scanner, thereby eliminating the Board's ability to select reports for substantive review, and to eliminate temporary employees during the collection period, significantly delaying the collection process. Although some of these cuts can be rectified by initiatives, such as the electronic filing system, others cannot, such as the cancellation of maintenance contracts on all of the Board's computer equipment, LAN, and photocopier.

The upgrading of the Board's staff continues. Several employees left the Board during 1996, and at year end the Board was in the process of hiring replacements. One new hire is an assistant district attorney in Brooklyn, who will bring an added dimension to the Board. She has prosecutorial experience, which the Board needs. In addition, the Board is hiring two financial disclosure investigators. One candidate is employed by the Law Department and the other by the Department of Investigation. These three new hires will be indispensable assets to the Board. Indeed, by shifting money from the attorney line to the Chief Investigator line the Board is able to acquire an investigator with significant computer experience, enabling the Board to make full use of the electronic filing system.

But also in the personnel area, the specter of past and possible future budget cuts continues to haunt the Board. As noted, Board staff have been cut by 35% since 1994. The Board's single enforcement attorney faces a backlog of more than 120 cases that grows daily despite Herculean efforts on her part. Also, the Board has only four support staff for the entire agency.

In 1996 the Board's financial disclosure unit, which has been cut by 50% in the past two years, was forced to suspend substantive review of financial disclosure reports (except for elected officials and commissioners), suspend enforcement of the financial disclosure law against former City employees, suspend review of many reports for completeness, and refuse to provide copies

of publicly available materials.

CONCLUSION

Outlined above are some of the efforts the Board has made (there are many more) and some of the initiatives the Board is undertaking, particularly the electronic filing system, to attempt to compensate for these staff and OTPS cuts. The Board has also replaced some of its staff with Work Experience Program participants and interns. Without their assistance, the Board could not function. But even with all of these efforts and initiatives, the Board needs some of these cuts restored.

TABLE 1
MEMBERS AND STAFF
OF THE
CONFLICTS OF INTEREST BOARD
1996

Members

Sheldon Oliensis, Chair
 Bruce A. Green
 Jane W. Parver
 Benito Romano
 Shirley Adelson Siegel

*Staff**

Executive

Mark Davies, Executive Director/Counsel

Administrative Unit

Jo-Ann Frey, Deputy Director
 Ute O'Malley, Director of Administration
 Myrna Mateo, Purchasing and Personnel Coordinator

Legal Unit

Hugh B. Weinberg, Deputy Counsel
 David B. Schacher, Associate Counsel
 Valerie Himelewski, Assistant Counsel (*until September 1996*)
 Patricia Green, Legal Secretary

Enforcement Unit

Joan R. Salzman, Director of Enforcement

Training and Education

Laura Denman, Director of Training and Education
 Jay Burstein, Education and Publications Coordinator
 Edith Hearn Walker, Secretary

Financial Disclosure

Jerry Rachnowitz, Director of Financial Disclosure
 Joanne Giura-Else, Deputy Director of Financial Disclosure
 John Sotomayor, MIS Coordinator/Senior Investigator
 John Rossi, Investigator (*until May 1996*)
 Daniel Yuen, Investigator (*until September 1996*)
 Veronica Martinez Garcia, Legal Secretary

* Many staff members hold multiple positions within the agency.

TABLE 2 PUBLICATIONS OF THE CONFLICTS OF INTEREST BOARD

Conflicts of Interest: Chapter 68 of the New York City Charter (May 1996) ("bluebook") (booklet)

Conflicts of Interest: Rules of the Board (May 1996) ("redbook") (booklet)

Financial Disclosure: Section 12-110 of the NYC Administrative Code (May 1996) ("greenbook") (booklet)

Advisory Opinions of the Conflicts of Interest Board (1990-date)

Annual Reports of the Conflicts of Interest Board (1990-1995) (includes advisory opinion summaries)

CityRap (1996) (public service announcement videotape)

Conflicts of Interest: Outlines of Selected Topics (Community Boards; Enforcement; Gifts and Honoraria; Moonlighting and Part-Time Jobs; Ownership Interests; Political Activities; Post-Employment Restrictions; Volunteer Activities for Not-for-Profit Organizations) (May 1996)

Enforcement of Ethics and Financial Disclosure Laws, NEW YORK LAW JOURNAL (May 19, 1995)

It's a Question of Ethics (1994) (videotape)

It's a Question of Ethics: The Game Show (1995) (videotape)

Kids Play (1996) (public service announcement videotape)

Myth of the Month, CHIEF-LEADER (April 1994-date) (monthly column by Board staff on selected ethics issues)

New York City Employees, Are You Violating the Law (leaflet)

New York City's Financial Disclosure Law: A Guide (Jan. 1995) (leaflet)

Planning Commissioners Avoid Conflicts of Interest, NEW YORK LAW JOURNAL (Feb. 16, 1995)

Rules for City Employees Who Seek a Second Job, CITYLAW (Feb./March 1996)

Thinking of Leaving City Government? Here Are the Rules, CITYLAW (April 1995)

What You Should Know: The Plain Language Guide to New York City Employee Ethics and Conflicts of Interest Rules (1991) (pamphlet)

What's a Conflict of Interest? (1994) (poster)

TABLE 3
FINANCIAL DISCLOSURE REPORTS
AS OF
DECEMBER 31, 1996

Calendar Year ("C.Y.")	Number of Reports Required for C.Y.	Reports Filed for C.Y.	Compliance Rate for C.Y.	Number of Fines Waived for C.Y.	Number of Fines Paid for C.Y.	Amount of Fines Paid for C.Y.	Current Non-Filers for C.Y. Act. Inact.*	Current Non-Payers for C.Y. Act. Inact.*
1989	12,087	11,971	99.0%	346	179	\$17,900	—	—
1990	12,577	12,567	99.9%	614	422	\$43,315	0	0
1991	11,856	11,836	99.8%	549	319	\$35,063	0	0
1992	11,959	11,940	99.8%	552	357	\$36,225	0	0
1993	11,873	11,853	99.8%	495	319	\$32,840	0	1
1994	11,900	11,704	98.4%	396	368	\$36,700	0	1
1995	11,460	11,296	98.6%	294	259	\$25,815	32	27
TOTALS:	83,712	83,167	99.3%	3,246	2,223	\$227,858	32	29

* "Act." indicates current non-filers or non-payers who are current City employees. ("Non-payers" are late filers who have failed to pay their late filing fine.) "Inact." indicates current non-filers or non-payers who are no longer City employees.

TABLE 4
CONFLICTS OF INTEREST BOARD
AUTHORIZED BUDGET AND BUDGETED HEADCOUNT
FY 94-FY 97

	<u>FY 94</u>	<u>Adopted FY 95</u>	<u>Modified FY 95</u>	<u>Adopted FY 96</u>	<u>Modified FY 96</u>	<u>Adopted FY 97</u>
PS	977,909	833,295	831,872	840,661	825,661	865,642
OTPS	154,004	207,619*	128,619	120,728	120,728	54,764
TOTAL	1,131,913	1,040,914	960,491	961,389	946,389	920,406
HEADCOUNT	26	20	20	20	17	17

TOTAL POSITIONS LOST: 9 (35%)

TOTAL OTPS LOST SINCE FY 95: \$152,855 (74%)

TOTAL OTPS AVAILABLE IN FY 97
AFTER DEDUCTION FOR FIXED COSTS:
\$27,087

* The \$54,000 was added to help offset the 23% cut in staff but was completely eliminated in October 1994. Note that the Board's FY 92 OTPS was \$197,024 and its FY 93 OTPS was \$180,991.

ADVISORY OPINIONS OF THE BOARD

SUMMARIES

OPINION SUMMARY

OPINION NO: 96-1

DATE: 4/29/96

CHARTER SECTION(S) INTERPRETED: 2601(3)
2604(d)(2), (d)(4)
2604(e)

SUBJECT(S): Post-Employment Restrictions
Waiver

OTHER OPINION(S) CITED: N/A

SUMMARY: A former public servant, who had accepted employment with the same municipal union for which he had worked full-time on release time with pay while in City service, requested a waiver of the post-employment restrictions that prohibited him from appearing before the agency from which he was on release time within one year after leaving city service and from working on particular matters with which he was involved while on release time with the union. The Board determined that a waiver of those post-employment restrictions was appropriate under the special circumstances of the case. The board further determined that the "agency served" by the public servant for purposes of Chapter 68 was, in reality, the Office of Labor Relations ("OLR"), not the agency from which he was on release time. Public servants on release time whose situations are similar to that of the former public servant in this case and who wish a waiver of the post-employment restrictions must apply to the Board for that waiver and must supply in support of that request the written approval of the head of OLR. The Board will consider such waiver requests on a case-by-case basis.

OPINION SUMMARY

OPINION NO: 96-2

DATE: 5/31/96

CHARTER SECTION(S) INTERPRETED: 2604(a)(1)(b)
2604(b)(2), (b)(3), (b)(4)
2604(e)

SUBJECT(S): Business Dealings with the City
Moonlighting
Prohibited Interests
Recusal
Teaching
Waivers/Orders

OTHER OPINION(S) CITED: 92-5

SUMMARY: Dr. Luis Marcos, President of the Health and Hospitals Corporation ("HHC"), may retain his position as a tenured professor at the New York University ("NYU") School of Medicine notwithstanding that the NYU Medical Center has an affiliation contract with HHC, pursuant to which it provides physicians and residents to work in three HHC hospitals, provided that he acts in accordance with the conditions discussed in the opinion. The Board, in allowing Dr. Marcos to retain his tenured position, acknowledges that, in circumstances such as those present in this case, it could create a hardship for the City to require its officials to choose between public service and a tenured position with an academic institution. While Dr. Marcos may retain his tenured position, he must recuse himself from the negotiation, review or ratification of the contract or any contract renewals. Dr. Marcos may, however, be involved in the management of the day-to-day services which the Medical School provides to HHC. Also, Dr. Marcos may teach pro bono at the Medical School and other local medical schools.

OPINION SUMMARY**OPINION NO: 96-3****DATE: 6/10/96****CHARTER SECTION(S) INTERPRETED: 2604(b)(5)****SUBJECT(S): Gifts****BOARD RULE(S) CITED: 1-01****OTHER OPINION(S) CITED: n/a**

SUMMARY: A public servant may not accept a gift worth more than \$50 from any person or firm which is or intends to become engaged in business dealings with the City, even if the public servant offers to pay for the portion of the gift which exceeds \$50.

OPINION SUMMARY

OPINION NO: 96-4

DATE: 7/8/96

CHARTER SECTION(S) INTERPRETED: 2604(a)(1)(a)
2604(b)(1)(b), (b)(6)

SUBJECT(S): Appearance Before City Agency
Community Boards

OTHER OPINION(S) CITED: 93-2
94-24
95-18

SUMMARY: Neither community board members nor their partners or employees in private firms may represent private clients before their community boards or community board committees, or appear before their community boards on behalf of their private clients.

OPINION SUMMARY

OPINION NO: 96-5

DATE: 7/15/96

CHARTER SECTION(S) INTERPRETED: 2604(b)(2), (b)(6)

SUBJECT(S): Appearance On a Matter Involving
Public Servant's City
Agency

OTHER OPINION(S) CITED: 94-24

SUMMARY: A public servant who is a part-time member of a City commission (the "Commission") and is a partner in a private law firm (the "Firm") would have a conflict of interest if the Firm were to be retained by an industry group in connection with possible litigation, in which the Commission is a party, concerning the adoption of new rules by the Commission. While the Firm would be retained to support the Commission's actions, such representation by the Firm would constitute a prohibited indirect appearance by the public servant in a matter involving an official act of the Commission and, further, could raise questions as to whether the public servant was seeking to serve the public interests of the Commission or the private interests of the Firm and its clients by voting in a particular way.

OPINION SUMMARY

OPINION NO: 96-6

DATE: 7/15/96

CHARTER SECTION(S) INTERPRETED: 2604(d)(2), (d)(4), (d)(5)

SUBJECT(S): Expert Witness
Post-Employment Restrictions

OTHER OPINION(S) CITED: n/a

SUMMARY: A former public servant may, within one year after his resignation from his former City agency, serve as a paid expert witness in cases which involve the agency but which are brought before other adjudicative bodies or courts, provided that the former public servant does not directly communicate with the agency if such cases are before the former public servant's former agency or were pending in the agency while the former public servant was employed there. Furthermore, the former public servant may never testify as a paid expert witness concerning any particular matter with respect to which he had worked personally and substantially during his tenure with the agency.

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